

IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE: § CASE NO. 12-38466-H1-13  
CAROL O'BRIEN §  
DEBTOR(S) § CHAPTER 13

TRUSTEE'S MOTION TO DISMISS, NOTICE OF HEARING, AND  
NOTICE OF DEADLINES FOR SUBMITTING MOTIONS TO  
MODIFY PLANS AND/OR OBJECTIONS TO CLAIMS

NOW COMES DAVID G. PEAKE, TRUSTEE, files this Motion to Dismiss in the above captioned cause and for cause would show the court as follows:

X 1. The Chapter 13 Plan must be modified to provide for the SECURED CLAIM of WELLS FARGO HOME MORTGAGE pursuant to the Proof of Claim filed on MARCH 14, 2013, (Claim 3-1) referencing pre-petition arrears. The total amount of the claim is now \$78,168.79 and which claim has rendered the Debtor's confirmed plan deficient.

X 2. The Chapter 13 Plan must be modified to provide for the SECURED CLAIM of WELLS FARGO HOME MORTGAGE pursuant to the Proof of Claim filed on MARCH 14, 2013, (Claim 3-1) referencing the on-going monthly mortgage payment of \$2,802.01 beginning DECEMBER 1, 2012. The Trustee asserts that the on-going mortgage payment renders confirmed plan unfeasible and deficient.

**IF YOU WANT A HEARING, YOU MUST REQUEST ONE IN WRITING AND YOU MUST RESPOND SPECIFICALLY TO EACH PARAGRAPH OF THIS PLEADING. YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT WITHIN TWENTY-ONE (21) DAYS FROM THE DATE YOU WERE SERVED AND GIVE A COPY TO THE PERSON WHO SENT YOU THE NOTICE. OTHERWISE THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED. IF YOU REQUEST A HEARING THE HEARING WILL BE HELD ON SEPTEMBER 18, 2013 AT 10:00 A.M. IN THE U.S. COURTHOUSE, 515 RUSK, RM 404, 4TH FLOOR, HOUSTON, TEXAS.**

**IF YOU CHOOSE TO MODIFY YOUR PLAN TO PROVIDE FOR THE SECURED CLAIM OF WELLS FARGO HOME MORTGAGE, WHICH CLAIM RENDERS YOUR PLAN DEFICIENT, YOU MUST FILE THIS MOTION TO MODIFY THE PLAN AND SERVE NOTICE THEREOF IN ACCORDANCE WITH BANKRUPTCY RULE 2002(a). YOU MUST NOTIFY ALL PARTIES IN INTEREST THAT ANY SUCH MOTION TO MODIFY THE PLAN WILL BE HEARD AT THE SAME TIME AND PLACE SPECIFIED HEREIN ON THIS MOTION TO DISMISS. FAILURE TO COMPLY WITH THIS REQUIREMENT MAY RESULT IN THE COURT'S REFUSAL TO CONSIDER YOUR MOTION TO MODIFY THE PLAN.**

**WHEREFORE PREMISES CONSIDERED**, the undersigned Trustee prays for an Order of Dismissal, conversion to Chapter 7 or such other relief as may be deemed just and appropriate.

Respectfully submitted,

/s/ David G. Peake

David G. Peake  
Chapter 13 Standing Trustee  
Admissions I.D. No. 15679500  
9660 Hillcroft, Ste. 430  
Houston, TX 77096  
(713) 283-5400 Telephone  
(713) 852-9084 Facsimile

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing Motion to Dismiss has been served upon the Debtors, their attorney of record, and the U. S. Trustee by mailing a copy of same to the addresses listed below via first class mail, on June 27, 2013. In addition, all parties in interest have been given a notice of time, date and place of the hearing.

**Debtor:**

CAROL O'BRIEN  
9307 LINDEN BROOK LANE  
ROSENBERG, TX 77469

**Debtors' Attorney:**

PJ FRANKLIN  
LAW OFFICE OF PJ FRANKLIN  
7322 SOUTHWEST FREEWAY, STE #700  
HOUSTON, TX 77074

**U.S. Trustee:**

Ms. Christine March  
Senior Assistant to the United States Trustee  
515 Rusk, Suite 3516  
Houston, TX 77002

/s/ David G. Peake

David G. Peake  
Chapter 13 Standing Trustee

IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
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IN RE: § CASE NO. 12-38466-H1-13  
§  
CAROL OBIEN §  
§  
§  
§  
DEBTOR(S) § CHAPTER 13

**ORDER OF DISMISSAL**

**CAME ON FOR CONSIDERATION** the Trustee's Motion to Dismiss in the above captioned Chapter 13 proceeding, and the Court, having considered the Motion, and finding that proper notice to all parties in interest has been given, and after hearing all opposition to the Motion, and upon consideration of the grounds set forth in the Trustee's Motion, the Court does hereby

**ORDER** that the above captioned Chapter 13 proceeding is hereby **DISMISSED**.

SIGNED ON \_\_\_\_\_.

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MARVIN ISGUR  
UNITED STATES BANKRUPTCY JUDGE